

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )

Amendment of Section 73.202(b), )

Table of Allotments, )

FM Broadcast Stations. )

(Sibley, Iowa and )

Brandon, South Dakota) )

MM Docket No. 96-66

RM-8729

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**COMMENTS  
OF  
BRANDON BROADCASTERS**

Comes now **Brandon Broadcasters** ("BB"), by Counsel, pursuant to the *PUBLIC NOTICE Report No. 2135 (released June 5, 1996)* and hereby respectfully submits these additional Comments in above-captioned Rule Making proceeding. In support hereof, BB submits the following:

1. In response to the *Notice of Proposed Rule Making (DA 96-364, released March 29, 1996)*, BB submitted Comments and a Counterproposal on May 21, 1996 requesting that Channel 261A be allotted to the community of Brandon, South Dakota so that that community may receive its first local aural transmission service. Under the proposal set forth by BB, Sibley, Iowa can keep its only local FM service while a new FM channel can be allotted to Brandon and a filing window established so that all members of the general public may apply for the opportunity to provide local aural transmission service to Brandon.

2. On or about June 3, 1996, 21st Century Radio Ventures, Inc. ("21st") submitted Reply Comments, which include two incorrect conclusions: (1) that the Commission's allotment priorities favor its original proposal over

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the counterproposal submitted by BB because more people will be served under its proposal as compared to BB's proposal, and (2) BB's proposal for Channel 261A is short-spaced to Channel 262A at Sibley, Iowa and, therefore, cannot be approved.

3. The conclusions set forth by 21st in its Reply Comments are grossly incorrect. There is no preferential arrangement of allotments under the plan proffered by 21st because 21st fails to take into consideration that its plan requires the abandonment of a community's only local aural service. The Commission has long held that a greater station to population ratio is not the only factor that must be considered. *See, e.g., Table of Allotments, Sumter, Orangeburg and Columbia, South Carolina: Report & Order DA 96-843 (released June 4, 1996).*

4. Here the Commission must also weigh the provisions of 47 U.S.C. §307(b) -- namely equitable and efficient factors. For example, the Commission must compare the two communities and their needs in terms of radio broadcast service. *See, KFNR, 7 FCC 2d 623 (1967).* Further, the Commission has permitted the only local transmission service in a small town to change its community of license to that of a larger nearby city only when the station is not seeking to diminish its service to the small town. *See, Amendment of Section 73.606(b), 6 FCC Rcd. 5317 (1991).* In this instance, the proposal of 21st to abandon Sibley so that it may provide service to more people cannot compare to the proposal set forth by BB whereby the only local aural service at Sibley is preserved. *See generally, Van Wert, Ohio and Monroeville, Indiana, 7 FCC Rcd. 6519 (1992).*

5. 21st also alleges that BB's proposal for Brandon does not comply

with the Commission's spacing requirements. 21st is wrong. BB's proposal protects Sibley's *authorized* transmitter site -- there is no longer a requirement to protect the allocation reference site once a Construction Permit issues, as is the case in Sibley. Attached hereto is a letter from BB's technical consultant verifying the fact that BB's proposal for Brandon protects Sibley's authorized transmitter site.

### Conclusion

WHEREFORE, the above premises considered, BB respectfully requests that its Comments and Counterproposal that were filed May 21, 1996 be ACCEPTED and that the Commission AMEND §73.202 of the Commission's Rules, as follows:

<u>City &amp; State</u>	<u>Existing</u>	<u>Proposed</u>	
Sibley, Iowa	262A	262A	[no change]
Brandon, South Dakota	---	261A	

Respectfully submitted,

**Brandon Broadcasters**

By:   
Cary S. Tepper

Its Attorney

**Booth, Freret & Imlay, P.C.**  
1233 20th Street, N.W.  
Suite 204  
Washington, D.C. 20036

(202) 296-9100

June 19, 1996

# GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

June 14, 1996

Mr. Cary Tepper  
Booth, Freret & Imlay  
1233 20th Street, NW  
Suite 204  
Washington, DC 20036

RE: MM Docket #96-66  
Sibley, Iowa, and Brandon, South Dakota

Dear Cary:

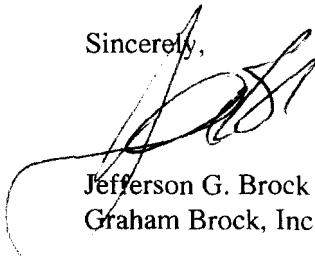
At your request, we have reviewed the reply comments filed by 21st Century Radio Ventures, Inc., the petitioner in Docket #96-66. These reply comments were in response to Brandon Broadcasters' counterproposal for Channel 261A at Brandon, South Dakota, rather than the proposed upgrade and change community of license proposed by 21st Century.

In its comments, 21st Century indicated that Channel 261A could not be allotted to Brandon and adequately protect Channel 262 at Sibley, based on the allocation site for the channel at Sibley. However, pursuant to §73.208 of the Commission's rules, the reference point which must be used to determine distance separation requirements for petitions to amend the Table of Allotments must first consider authorized transmitter sites. As indicated in Brandon Broadcasters' counterproposal, we utilized the authorized transmitter site for KAJQ, Channel 262A at Sibley. 21st Century's comments reference the allocation site which is to be used as a second reference point only if there is no authorized transmitter site. In this case, since there is an authorized transmitter site, that is the site which should be and was utilized in the initial Brandon filing.

In addition, 21st Century indicates their proposed C3 at Brandon would provide service to 23,586 persons above our Class A proposal. However, they failed to take into consideration the loss of service which would result from the removal of the Class A CP at Sibley. Based on our calculations, 19,403 persons would receive service from KAJQ if it were to remain in Sibley. For a more proper comparison, this figure should be subtracted from the proposed gain for the Brandon C3 to show the actual gain. Therefore, to be correct, a Class A in Brandon and a Class A in Sibley together should be compared to the C3 at Brandon.

Should you have any questions regarding this information, please do not hesitate to contact me.

Sincerely,



Jefferson G. Brock  
Graham Brock, Inc.

JGB/mm

cc: Brandon Broadcasters

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 19th day of June, 1996, I have served a copy of the foregoing "**Comments of Brandon Broadcasters**" first-class, postage-prepaid, on the following:

\*John A. Karousos  
Chief, Allocations Branch  
Federal Communications Commission  
2020 M Street, N.W.; Room 561  
Washington, D.C. 20554

James L. Primm, President  
21st Century Radio Ventures, Inc.  
530 Wilshire Blvd.  
Suite 301  
Santa Monica, CA 90401  
(Petitioner)

  
Cary S. Tepper, Esq.

\*/ indicates delivery by hand